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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL HOUSING FINANCE AGENCY,
in its capacity as Conservator of Federal
National Mortgage Association and Federal
Home Loan Mortgage Corporation; FEDERAL
HOME LOAN MORTGAGE
CORPORATION; FEDERAL NATIONAL
MORTGAGE ASSOCIATION,

Plaintiffs,

v.

SATICOY BAY, LLC,

Defendant.

Case No.: 2:16-cv-02242-JAD-BNW

**PLAINTIFFS' NOTICE OF NEW
AUTHORITY IN SUPPORT OF THEIR
RENEWED MOTION FOR SUMMARY
JUDGMENT**

1 Plaintiffs Federal Housing Finance Agency (“FHFA”), Federal Home Loan Mortgage
 2 Corporation (“Freddie Mac”), and Federal National Mortgage Association (“Fannie Mae”)
 3 hereby submit the following notice of new authority, a recent published decision of the U.S.
 4 Court of Appeals for the Ninth Circuit: *M&T Bank v. SFR Investments Pool 1, LLC*, 963 F.3d
 5 854 (9th Cir. 2020), attached hereto as **Exhibit A**.¹ This decision resolves an issue central to the
 6 summary judgment briefing in this case—whether Plaintiffs timely asserted their quiet-title and
 7 declaratory-relief claims that invoke the Federal Foreclosure Bar as the rule of decision with
 8 regard to four of the Properties.

9 In *M&T Bank*, the Ninth Circuit concluded that such claims are subject to a six-year
 10 limitations period as a matter of federal law. 963 F.3d at 854 (citing 12 U.S.C. § 4617(b)(12)(A)
 11 (the “HERA Limitations Provision”)).

12 *First*, the Ninth Circuit confirmed that the HERA Limitations Provision applies to claims
 13 brought by the Enterprises and their servicers, as well as FHFA, because an Enterprise “‘stands
 14 in the shoes of’ the FHFA with respect to its current claims to quiet title to the deed of trust,
 15 which is property of the conservatorship,” and an Enterprise’s servicer “stands in the same shoes
 16 as its assignor,” the Enterprise. *Id.* (citations omitted).

17 *Second*, the Ninth Circuit concluded that under the HERA Limitations Provision, a six-
 18 year limitations period for “contract”-like claims, not a three-year limitations period for “tort”-
 19 like claims, applied. *See id.* The court reasoned that the claim was “entirely ‘dependent’ upon
 20 Freddie Mac’s lien on the property, an interest created by contract,” and noted that the plaintiffs
 21 did not “seek damages or claim a breach of duty resulting in injury to person or property, two of
 22 the traditional hallmarks of a tort action.” *Id.*

23 *Third*, the Ninth Circuit held that “even if the question were closer,” it would still apply
 24 the six-year period, because federal policy mandates that “[w]hen choosing between multiple
 25
 26

27 ¹ Terms not defined herein shall take on the definition in Plaintiffs’ Renewed Motion for
 28 Summary Judgment (ECF No. 47).

1 potentially-applicable statutes,” the longer limitations period should apply. *Id.* (quotation marks
2 and citation omitted).²

3 Plaintiffs offer the same arguments here, and the *M&T Bank* decision supplements the
4 authorities cited in Plaintiffs’ Reply in Support of their Renewed Motion for Summary Judgment
5 (ECF No. 53) at 4-10.

6 CONCLUSION

7 Plaintiffs respectfully request that the Court take *M&T Bank* into account when
8 considering the merits of the pending motions, grant Plaintiffs’ Renewed Motion for Summary
9 Judgment, and declare that the HOA Sales did not extinguish the Enterprises’ interests in the
10 Properties.

11
12 DATED: August 5, 2020.

Respectfully submitted,

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² The Ninth Circuit conducted substantially the same analysis, and reached the same conclusion, in three other recent decisions. *See Freddie Mac v. SFR Invs. Pool 1, LLC*, 810 F. App’x 589 (9th Cir. 2020) (unpublished disposition); *Nationstar Mortg. LLC v. Keynote Props., LLC*, 810 F. App’x 570 (9th Cir. 2020) (unpublished disposition); *Bourne Valley Ct. Tr. v. Wells Fargo Bank, NA*, 810 F. App’x 492 (9th Cir. 2020) (unpublished disposition).

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on August 5, 2020, a true and correct copy of the **NOTICE OF NEW AUTHORITY**, was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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/s/ Pamela Carmon
An Employee of Fennemore Craig, P.C.

EXHIBIT INDEX

DESCRIPTION	EXHIBIT
Published decision of the U.S. Court of Appeals for the Ninth Circuit: <i>M&T Bank v. SFR Investments Pool 1, LLC</i> , 963 F.3d 854 (9th Cir. 2020)	A